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No. 91-5013

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

WILLIAM O. TRIGG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals, after finding that the police had probable cause to arrest petitioner for a traffic violation, properly declined to inquire whether the arrest was pretextual.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-4) is reported at 925 F.2d 1064. A prior opinion of the court of appeals remanding the case (Pet. App. 20-26) is reported at 878 F.2d 1037. The opinion of the district court on remand (Pet. App. 10-19) and its prior opinion (Pet. App. 27-41) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on February 27, 1991. On May 17, 1991, Justice Stevens extended the time for filing a petition for a writ of certiorari to June 27, 1991, and

the petition was filed on June 26, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

On his conditional plea of guilty in the United States District Court for the Northern District of Indiana, petitioner was convicted of possession of cocaine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1). He was sentenced to 120 months' imprisonment, to be followed by five years of supervised release. The court of appeals affirmed.

Pet. App. 1-4.

1. On February 1, 1988, Officers Phillip Bird and Dan Edenfield, then assigned to the warrants and fugitive division of the Allen County Police Department, arrested petitioner on an outstanding body attachment that had issued due to petitioner's failure to appear in court on several occasions. After transporting petitioner to the lockup, Officer Bird ran a computer check that revealed that petitioner was driving with a suspended license. Petitioner was not informed of the status of his licence, which was returned to him without comment when he was released from custody. Pet. App. 21.

Officer Bird was subsequently assigned to the narcotics division. On March 16, 1988, while investigating known crack houses for possible drug trafficking, Officer Bird noticed a maroon Cadillac parked in the driveway of petitioner's house. Officer Bird had seen the car parked in front of a known crack house one week earlier. Bird requested and received permission

to set up surveillance on the automobile. Shortly thereafter, petitioner left the house, entered the Cadillac, and drove away. Three police cars followed. Pet. App. 21.

Officer Bird, recalling that petitioner's driver's license had been suspended, checked and found out that petitioner's license was still suspended. This information was relayed to Officer Royse of the Allen County Police Department, who was asked to assist in the stopping of a suspended driver.[1] Royse complied and arrested petitioner for driving on a suspended license. Pet. App. 21. Under Allen County Police Department policy, a person operating a motor vehicle with a suspended license is subject to a custodial arrest. The option of making a custodial arrest or merely issuing a summons is left to the officer's discretion. Id. at 15-16, 21 n.3. Royse chose to make a custodial arrest because he did not feel that petitioner would comply with a summons, based on his knowledge of petitioner's past failures to appear in court. Id. at 16, 21 n.3.[2]

After petitioner was handcuffed, a narcotics officer who had arrived on the scene searched petitioner and found 53 grams of cocaine in his coat pocket. Upon the discovery of the cocaine, petitioner made several incriminating statements to the police

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[1] Although authorized to do so, narcotics officers ordinarily do not make traffic arrests in Allen County. Pet. App. 21 n.2.

[2] At the suppression hearing, Officer Royse testified that his decision to arrest petitioner was also based on petitioner's attempts to flee. The district court, however, expressly discredited this testimony. Pet. App. 21 n.3.

officers. Pet. App. 21.

2. Petitioner moved to suppress the evidence on the ground that the police had employed the traffic arrest as a pretext to search for evidence of a narcotics violation. After an evidentiary hearing, the district court granted the motion. Relying primarily on the fact that several narcotics officers had participated in a routine traffic arrest, the court found that the arrest was a pretext to search for narcotics. Pet. App. 27-41.

The court of appeals reversed and remanded. Pet. App. 20-26. The court rejected the claim that an arrest based on probable cause may be invalidated on pretext grounds if the arrest did not conform to usual police practices. The court stated instead that the validity of an arrest depends on two objective factors: whether the police have probable cause to believe the suspect had committed or was committing an offense, and whether the arresting officers had authority under applicable law to effect a custodial arrest for the particular offense. The court held that if those two factors are present, an arrest is reasonable under the Fourth Amendment. Pet. App. 24. The court of appeals remanded for application of that standard to petitioner's arrest. Id. at 25.

On remand, the district court denied the suppression motion. Pet. App. 10-18. It found that because Officer Royse knew that petitioner was driving with a suspended license, he had probable cause to arrest petitioner. Id. at 15. The court further found

that Royse had the authority to make a custodial arrest of petitioner for driving on a suspended license. Id. at 15-16. Accordingly, the court concluded that petitioner's arrest was valid under the Fourth Amendment. Id. at 16.[3]

3. The court of appeals affirmed. Pet. App. 1-4. The court adhered to the Fourth Amendment standard articulated in its earlier opinion, and rejected petitioner's claim that "conformance to usual police practices must be factored into an objective analysis of the reasonableness of an arrest." Id. at 3-4. The court recognized that its approach "virtually eliminates the concept of a 'pretextual arrest,'" but concluded that such a result is consistent with this Court's decisions in Gustafson v. Florida, 414 U.S. 260 (1973), and United States v. Villamonte-Marquez, 462 U.S. 579 (1983). Pet. App. 3-4.

ARGUMENT

Petitioner contends (Pet. 8-14) that the court of appeals erred in holding that an arrest that is validly based on probable cause may not be challenged as pretextual, and he further claims that the court of appeals' decision conflicts with decisions of this Court and with decisions of other circuits. The court of appeals, however, correctly rejected petitioner's contention, and the issue presented in this case does not raise a conflict

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[3] The district court also rejected petitioner's claim that evidence found during the search of his car should be suppressed. The court concluded that the evidence was found during a properly conducted inventory search. Pet. App. 17-18.

calling for this Court's review.[4]

1. This Court has repeatedly made clear that the validity of searches and seizures under the Fourth Amendment must be determined under "a standard of objective reasonableness without regard to the underlying intent or motivation of the officers involved." Scott v. United States, 436 U.S. 128, 138 (1978). In United States v. Villamonte-Marquez, 462 U.S. 579, 584 n.3 (1983), for example, the Coast Guard stopped a vessel to check its documentation pursuant to a statute authorizing such inspections. Relying on Scott, the Court rejected the contention that the inspection was invalid because the Coast Guard's real reason for conducting the inspection was to pursue "an informant's tip that [the] vessel * * * was thought to be carrying marijuana." In Maryland v. Macon, 472 U.S. 463, 470-471 (1985), the Court applied the same objective approach in rejecting the claim that the purchase by undercover officers of obscene materials with marked money constituted a warrantless seizure because the officers actually intended to retrieve the money for use as evidence. And in Horton v. California, 110 S. Ct. 2301 (1990), the Court rejected the "inadvertence" rule, under which police officers could not seize evidence found in plain view during a warrant-authorized search, where the officers had suspected they might find the evidence but had failed to seek

[4] This Court recently denied certiorari in a case from the Seventh Circuit raising the same issue as is presented in this petition, United States v. Hope, 906 F.2d 254 (1990), cert. denied, 111 S. Ct. 1640 (1991), and there is no reason warranting a different result here.

a warrant to search for it. The Court stated that "evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." Id. at 2308-2309.

Applying those principles, the court of appeals properly rejected petitioner's claim that an arrest based on probable cause may be scrutinized to determine whether it was, in fact, a pretext for an investigation. When police officers possess objective information establishing probable cause to believe that an individual has violated the law, and the arresting officers have the legal authority to effect the arrest, the arrest satisfies the Fourth Amendment's requirement of reasonableness. See Gustafson v. Florida, 414 U.S. 260, 265 (1973). Further inquiry into the officer's subjective motives or reasons for undertaking the arrest is not required.

Petitioner does not dispute the court of appeals' holding that any inquiry into the validity of an arrest must turn on objective factors rather than a particular officer's subjective state of mind. Pet. 11; Pet. App. 3. He claims, however, that in determining the objective reasonableness of an arrest the court should inquire whether a reasonable officer, following general police practices, would have made the same arrest absent suspicions that the individual was involved in other crimes. Pet. 9.

Although petitioner's approach superficially appears to refer to an objective benchmark, in practice it would compel an

inquiry into the murky question of what a reasonable police officer would do in the myriad of situations as to which no formal police policy can be identified. As the concurrence below explained, the proposed test is, therefore, "in practical application, not very different from that which would be undertaken if a subjective approach were employed." Pet. App. 25. Even where it is easy to determine standard police policy, it is not clear why departures from that policy would violate the Fourth Amendment when the stop and arrest is otherwise justified by probable cause. The violation of a valid law exposes an individual to arrest; there is no constitutional immunity from arrest simply because the arresting officer may also have other suspicions that caused him to focus on that individual, or because the police do not invariably arrest all violators.

Petitioner contends (Pet. 13-14) that a pretext limitation, measured by the standard of a hypothetical "reasonable" police officer, is necessary in order to protect against the arbitrary exercise of police discretion. That suggestion of arbitrariness, however, misses the point that the requirement of probable cause itself imposes a sufficient restraint on police discretion for Fourth Amendment purposes. No arrest is valid if a reasonable officer would not have had probable cause. For that reason, the inventory search cases on which petitioner relies (Pet. 11, 13-14) are not applicable here. It is true that inventory searches, to be valid, must be guided by standardized criteria or established routine. See Florida v. Wells, 110 S. Ct. 1632, 1635

(1990); South Dakota v. Opperman, 428 U.S. 364 (1976). But that is because inventories are justified, not by probable cause, but by administrative concerns accompanying police custody over a person and his possessions. In the absence of any requirement of individualized suspicion, a standardized policy is needed to ensure that inventory searches serve those administrative concerns rather than allowing "a general rummaging in order to discover incriminating evidence." Wells, 110 S. Ct. at 1635. A similar need is not implicated when an arrest takes place, because it must be justified by probable cause.

2. Petitioner errs in contending (Pet. 9) that there is a circuit conflict on the pretext issue warranting this Court's review. A majority of recent court of appeals decisions that have addressed the issue have upheld objectively valid police actions against claims that they were pretextual, without permitting an inquiry into standard police practice. See, e.g., United States v. Cummins, 920 F.2d 498, 501 (8th Cir. 1990), ("[the officer] had a legitimate reason -- the traffic violation -- for stopping the [car] and that is the end of our inquiry"), petition for cert. pending, No. 90-1628; United States v. Causey, 834 F.2d 1179, 1185 (5th Cir. 1987) (en banc) ("in a case where the officers have taken no action except what the law objectively allows their subjective motives in doing so are not even relevant to the suppression inquiry"); United States v. Neresian, 824 F.2d 1294, 1315-1317 (2d Cir.) (upholding an objectively reasonable Terry frisk, despite defendant's claim that it was a pretext for

a search to investigate officer's suspicions), cert. denied, 484 U.S. 957 (1987); United States v. Hawkins, 811 F.2d 210, 214 (3d Cir.) ("a seizure that is valid based upon the stated purpose cannot be challenged on the grounds that the seizing officers were in fact motivated by an improper purpose"), cert. denied, 484 U.S. 833 (1987).

Petitioner relies (Pet. 9) on United States v. Smith, 799 F.2d 704, 708-709 (11th Cir. 1986), but that case addressed a different issue than is presented here. In Smith, the police stopped a car ostensibly to investigate a traffic violation; the defendant claimed the stop was a pretext to investigate more serious offenses. The court held that a traffic stop based on reasonable suspicion could be challenged as pretextual if a reasonable officer would not have made the challenged stop absent suspicions of other illegal activity. The court did not hold, however, that a stop based on probable cause may be invalid because of the arresting officer's ulterior motives or his departure from usual practice. The court in Smith explicitly declined to address the question, which is presented here, of "when, if ever, a stop for probable cause resulting from an observed traffic violation might be invalid as pretextual." 799 F.2d at 709. Subsequent Eleventh Circuit cases have continued to leave that issue open. See United States v. Dunkley, 911 F.2d 522, 525 (11th Cir. 1990), cert. denied, 111 S. Ct. 765 (1991); United States v. Strickland, 937 F.2d 937, 940 (11th Cir. 1990).

One circuit, however, has adopted an approach that conflicts

with the approach adopted in this case. In United States v. Guzman, 864 F.2d 1512, 1517 (10th Cir. 1988), the court expressed the view that "the pretextual use of police power may violate the Fourth Amendment," even where the police have observed a traffic offense that would otherwise justify a stop. The court acknowledged that a pretext claim should not involve "an inquiry into the officer's subjective intent," but concluded that "an objective analysis of the facts and circumstances of a pretextual stop is appropriate," id. at 1515, to consider "not whether the officer could validly have made the stop, but whether under the same circumstances a reasonable officer would have made the stop in the absence of the invalid purpose." Id. at 1517.

Although Guzman recognizes a form of pretext claim that other circuits have rejected, we do not believe that review of that issue is warranted here. Even under the approach adopted in Guzman, petitioner would not prevail on the record in this case. The narcotics officers observed petitioner driving on a suspended license. Although they had the authority to make traffic arrests, the officers relayed the information to traffic Officer Royse and requested his assistance. Royse determined to arrest petitioner for the offense based in part on petitioner's history of failure to appear in court. Under Allen County Police Department policy, the decision to arrest an individual for driving on a suspended license is left to the officer's sound discretion. The district court credited Royse's testimony, finding his arrest of petitioner to be reasonable. Pet. App. 16.

Thus, the arrest of petitioner conformed to applicable policies. There is nothing in the record to indicate that a reasonable officer would have ignored the fact that petitioner was driving while his license was suspended. Instead, a common-sense approach to police practice suggests that a reasonable officer would have arrested petitioner under the circumstances.

Quite apart from the fact that petitioner would not succeed under Guzman, the Tenth Circuit's application of that case indicates that it is an extremely narrow rule; to our knowledge, no pretext claim asserted under Guzman has succeeded. See, e.g., United States v. Neu, 879 F.2d 805, 808 (10th Cir. 1989) (rejecting pretext claim where a reasonable officer would have made a traffic stop after the defendant abruptly slowed down while being followed); United States v. Erwin, 875 F.2d 268, 272 (10th Cir. 1989) ("a reasonable New Mexico patrol officer routinely would have stopped a vehicle traveling twelve miles over the speed limit even in the absence of the alleged illicit motive"); United States v. Rivera, 867 F.2d 1261, 1263-1264 (10th Cir. 1989) (rejecting claim that traffic stop leading to drug seizure was pretextual because state police had "working arrangements" with federal narcotics agents and had previously made similar stops and seizures). In light of the narrowness with which Guzman has been applied, and the fact that no other circuit has extended Guzman to an arrest based on probable cause, review is not warranted in this case to resolve the conflict between the Tenth Circuit and the other courts of appeals.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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